Food and Agriculture Organization of the United Nations

UNDP

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UN-REDD PROGRAMME

Key messages

- Clarity on who owns emissions reductions (ERs), including who is entitled to benefit from Reducing Emissions from Deforestation and forest Degradation, plus the sustainable management of forests, and the conservation and enhancement of forest carbon stocks (REDD+), is paramount to access different sources of forest climate finance.
- As most countries' legislation does not yet specify who owns emissions reductions rights, ownership or management rights associated with forest resources often provide a basis for understanding how to allocate them.
- Legal options to clarify ERs rights might include updating legislation or agreeing upon how rights associated with ERs, or benefit allocation arrangements, will be established on a contractual basis with landowners and resource rights holders in compliance with the law.
- Drafting benefit sharing mechanisms through participatory and inclusive processes that direct benefits to local communities, small owners, and Indigenous Peoples contributes to trust building among the parties in this area.

Carbon rights in the context of jurisdictional REDD+: Tenure links and country-based legal solutions

Information brief

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CONTEXT

Financing REDD+ actions at global, national and local scales showcases a recognition of the crucial role nature plays in climate change mitigation, along with local communities, the private sector and governments.

In recent years, a number of initiatives have emerged to encourage countries and other actors to protect their forests in return for financial benefits based on the amount of avoided emissions and enhancement of carbon in trees.

The decisions adopted at the United Nations Framework Convention on Climate Change (UNFCCC) from COP 16 to COP 19 were relevant to set the foundation of REDD+.[11] In particular, COP 19 was key to combine the key operational elements in the Warsaw Framework for REDD+ (WFR) to enable the operationalization of REDD+ Results-Based Payments (RBPs).

In addition, the latest developments under the Paris Agreement require decision makers and legislators to establish how climate mitigation initiatives will address forest tenure and related rights to foresee, plan and distribute risks and benefits derived from reducing emissions, conservation and activities related to the enhancement of forest carbon stocks.

Indeed, to access forest climate finance, either from results-based payments (RBPs) under public schemes or voluntary carbon markets, countries need to align with UNFCCC decisions and comply with legal requirements, often involving clarity on who owns emissions reductions (ERs) or holds carbon rights (CRs) and who has the right to transfer them.

The following info brief compares how these issues are addressed under results-based payments (RBPs) and carbon market schemes: (i) The first phase of the REDD+ RBPs Pilot Programme under the Green Climate Fund (GCF) and the World Bank Carbon-Fund Programme (Forest Carbon Partnership Facility), (ii) the REDD+ Environmental Excellence Standard (TREES) under the Architecture for REDD+ Transactions (ART) and the VCS Jurisdictional and Nested REDD+ Framework (JNR).

As most countries' legislation does not yet specify who owns emissions reductions rights, ownership or management rights associated with forest resources often provide a basis for understanding how to allocate them. Ownership of emissions reductions is often a source of legal and policy debate, but since it is a requirement for accessing forest carbon finance, interested countries need to make progress and adopt viable legal options, allowing jurisdictional entities to transact ER rights while respecting Indigenous Peoples, community rights and encouraging participation from the private sector.

A key priority for the UN-REDD Programme is to support forestry countries in complying with ER legal requirements, paying due attention to communities and Indigenous People's rights and assessing the implications of lawmaking processes. Lately, efforts have centred on helping countries comply with ERs legal requirements under the GCF REDD+ Pilot Programme and, more recently, under the REDD+ Environmental Excellence Standard (TREES), both of which are consistent with UNFCCC decisions and the Paris Agreement.

This info brief presents preliminary findings from the UN-REDD comparative study of ERs rights in the context of jurisdictional REDD+, still under development. It highlights country experiences and contains legal considerations aimed at to clarifying forest tenure implications and legal options related to ERs rights. It also takes into consideration the collaborative work with UN-REDD forestry countries and key partners such as global law firm White & Case LLP.

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[1] The United Nations Framework Convention on Climate Change (UNFCCC) in Cancun (COP 16) "encouraged developing country Parties to contribute to mitigation actions in the forest sector by undertaking the following activities, as deemed appropriate by each Party, and in accordance with their respective capabilities and national circumstances: (a) Reducing emissions from deforestation; (b) Reducing emissions from forest degradation; (c) Conservation of forest carbon stocks; (d) Sustainable management of forests; and (e) Enhancement of forest carbon stocks". These activities together stand for REDD+.

Table 1: Description of legal requirements related to emissions reductions/carbon rights under REDD+ programmes and standards

Eligible beneficiaries: National or sub national jurisdictions	
GCF REDD+ Results-Based Payments	In section F of the pilot programme for REDD+ results-based payments, legal title to REDD+ results requires developing countries to: "(i) provide an analysis with respect to legal title for REDD+ results in the country, including an analysis of entitlement to claim for the results to be paid for by the GCF and (ii) to provide a covenant that no other party has a competing claim to the results proposed to the GCF in accordance with national policy, legal or regulatory frameworks." Green Climate Fund (GCF) REDD+ Portal: See projects approved (section F of the projects, dealing with REDD+ title) https://www.greenclimate.fund/redd
World Bank Carbon Fund	"Submit evidence demonstrating the Programme Entity´s ability to transfer title to emissions reductions (ER), free of legally recognized interests, encumbrance or claim of a third party and provide a tentative risk rating that this ability is clear or uncontested. As part of this demonstration, include a discussion on the implications of the land and resource regime on the ability to transfer Title to ERs to the Carbon Fund. (conditions of effectiveness and sale and purchase – schedule 1) The ability to transfer Title to ERs may be demonstrated through various means, including reference to existing legal and regulatory frameworks, sub arrangements with potential land and resource tenure rights-holders (including those holding legal and customary rights, as identified by the assessments conducted under section 4.4), and benefit sharing arrangements under the Benefit Sharing Plan." Refer to criterion 28, indicator 28.3 and criterion 36, indicator 36.2 and indicator 36.3 of the Methodological Framework FCPF – Carbon Fund – ER-PD Template Section 17.2 Transfer of ER titles https://www.forestcarbonpartnership.org/requirements-and-templates
ART-TREES	Provide a summary of the participant's rights to the emissions reductions and removals (ERRs) generated from the accounting area, such as regulatory frameworks, laws or administrative orders, or a description of how rights will be obtained in accordance with domestic law. It may be unnecessary for the participant to establish or enact new legislation or a legal framework to address carbon rights. However, the participant must explain how, under existing constitutional or legal frameworks, carbon rights and related intangible property interests are established and addressed. This explanation should include how such carbon rights and intangible property interests would be established, the legal basis for creating such rights and interests and how claims to such rights from private parties, Indigenous Peoples or sub national entities will be resolved. This should be consistent with applicable UNFCCC Cancun Safeguards and Section 12.0. To address the latter, the participant must describe any agreements in place that will be in place for the transfer of TREES rights or benefit allocation arrangements with landowners or resource rights holders that exist between the participant and project owners, landowners and other collective rights holders (including Indigenous Peoples and other traditional communities). TREES will only be issued with a demonstration of clear ownership or rights. Participants may provide this demonstration at a later date, within the same crediting period or during a subsequent crediting period, provided the crediting periods are adjacent. The REDD+ Environmental Excellence Standard (TREES) https://www.artredd.org/wp-content/uploads/2021/12/TREES-2.0-August-2021-Clean. p.81

VERRA VCS JNR	**Authority and rights to emissions reductions** Jurisdictional programmes can only be registered by jurisdictional proponents that have the legal authority to adopt REDD+ policies and measures at the jurisdictional level. Updated language to the Authority and Rights to Emission Reductions section (previously Programme Ownership) state that jurisdictional proponents must demonstrate how jurisdictional rights relate to the rights of non-state stakeholders including indigenous peoples, local communities, private entities and individuals and how the rights of existing and any future nested projects or programmes will be respected. Jurisdictional and Nested REDD+ (JNR) Requirement under the Verified Carbon Standard (VCS) now called VERRA. JNR_Version_4_Summary_Updates_and_Effective_Dates.pdf (verra.org)

Source: Prepared by the authors.

1. LEGAL TRENDS TO DEFINE ERs RIGHTS

Rights over emissions reductions or carbon removals can be defined as intangible assets created by legislative and contractual arrangements that arise from carbon sequestered and carbon stored in forests that would likely be otherwise released. They can be linked to tenure ownership, user rights or some kind of control on the land and trees, or it can be considered as a separate interest.

The term "Title to ERs" refers to the "full legal and beneficial title and exclusive right to ERs contracted under the Emission Reductions Payment Agreement (ERPA)" in the context of the FCPF - Carbon Fund.

The details about the emissions reductions title and title transfer will be different where forest and lands are by default state-owned and where forestland is managed by private landowners or communities.

Common law and civil law systems define property rights in different ways, and in most forestry countries, customary or traditional legal systems are relevant for the interpretation of land and carbon rights.

The **Democratic Republic of the Congo's** Ministerial Decree 047/2018 sets the approval procedure for REDD+ investments clearly stating that carbon stocked in forests is originally owned by the state. This approach is in line with the provisions contained in the Constitution (2006) and, in particular, with the provisions contained in the Forest Code (2002), stipulating that forests constitute the (original) property of the state. Similarly, in **Zambia** primary ownership in ERs rests with the government. According to the Forest Act (2015), the government owns all trees in forests and all forest produce until transferred to others. "Carbon" is defined as a forest produce in the instrument, along with many others. The Act describes community forest management groups that can own forest user rights, potentially including carbon, through community forestry agreements. In the same direction, **Mozambique**´s REDD+ decree (2018), establishes state ownership of all ERs generated in the country. (Articles 4 and 6).

On the other hand, examples of mixed tenure regimes include **Ghana**, which presents a legally pluralistic environment, where land rights and tenures are administered in a plural legal environment, with customary laws and norms operating alongside statutory ones. Because of the complexity of the land and timber tenure system, the domestic distribution and ownership of ERs might be complex if strictly associated with tenure rights. It is relevant to ensure that beneficiaries' rights are duly recognized across all categories of relevant local stakeholders, as indicated in the benefit sharing plan. To date, linking rights based approaches to community resource management areas (CREMAs) is opening new streams of potential benefits for local communities; they help to ensure the long-term success of initiatives to foster collective management of natural resources and provide an entry point to clarify land and tree tenure rights.

Box 1

Concepts and definitions

A **carbon credit** is a certified unit registered under a recognized carbon standard, typically representing one tonne of carbon dioxide equivalent emissions reductions.

Emissions reductions (**ERs**) or **carbon rights** (**CRs**) are intangible assets created by legislative and contractual arrangements that arise from the storage of carbon in forests. They can be linked to tenure ownership rights or some kind of control of the land and trees, or it can be considered as a separate interest. While carbon rights might refer to the bundle of rights associated with the carbon stored or sequestered by forests which may have tenure implications (the landowner or rights holder owns the carbon), emissions reductions titles might be linked to the credits derived from Reducing Emissions from Deforestation and forest Degradation, plus the sustainable management of forests, and the conservation and enhancement of forest carbon stocks (REDD+) activities. In the context of jurisdictional REDD+ programmes, ERs and Removals (ERRs) are also the result of REDD+ policies and measures implementation, in line with UNFCCC Conference of the Parties. The term "**Title to ERs**" has been defined in the Methodological Framework (FCPF), referring to the "full legal and beneficial title and exclusive right to ERs contracted for under the Emission Reductions Payment Agreement (ERPA)."

Forest tenure may be defined as the right – statutory or customary – that determines who can use, manage, control or transfer forest lands and resources, such as wood or the multitude of non wood forest products (NWFPs). Forest tenure defines for how long and under what conditions these rights are held. The Food and Agriculture Organization Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) specify that tenure systems may be based on written policies and laws, as well as on unwritten customs and practices.

More details are available at: https://www.fao.org/forestry/tenure/en/

Reducing Emissions from Deforestation and forest Degradation, plus the sustainable management of forests, and the conservation and enhancement of forest carbon stocks (REDD+) benefit sharing refers to the distribution of both monetary and non-monetary benefits such as capacity building, infrastructure and ecosystem services generated through the implementation of REDD+. It implies establishing a process to channel such benefits to eligible stakeholders. Entitlements to REDD+ benefits are to be considered separately from ER titles.

Source: Prepared by the author.

Proposed legal frameworks for CREMAs are contained in the wildlife bill that is currently before Ghana's parliament for approval.

In **Papua New Guinea**, customary law is recognized by the Constitution of 1975, stipulating that forest resources are owned by the customary owners of the relevant land, as "the rights of customary owners of forest resources are to be fully recognized and respected in all transactions affecting the resource" (Forestry Act, 1991). In particular, customary landowners legally own approximately 97 percent of land in Papua New Guinea. It is also well accepted that landowners have rights to the benefits derived from climate change project related agreements (Climate Change Management amended Act, 2021).

In **Viet Nam**, forestry ownership rights imply the right to regulate any benefits and profits generated from natural forests. According to the Forestry Law (2017), "forest owners have rights to be provided with forest environment services and benefit from such services," including "sequestration and storage of forest carbon and reduction of GHG emissions by reduction of forest loss and degradation and sustainable forest management."

Table 2: Forest tenure and ERs rights implications in the context of national or jurisdictional REDD+ programmes based on the analysis of ten countries

Basic setup of forest tenure	Linkages with ER titling	Linkages with benefit sharing of national or jurisdictional REDD+ programmes
State owned forests The state (including provinces, municipalities) owns forestry resources, including ecosystem services such as carbon.	The state primarily owns ERs rights and (i) is entitled to administer ERs or sell ERs internationally; (ii) devolves ERs to third parties (communities/project developers) potentially for selling in carbon markets.	The state implements a REDD+ programme and develops, in consultation with relevant parties, a benefit sharing plan (regional/national level), establishing eligibility criteria for being a beneficiary/assigning rights to beneficiaries.
Mixed tenure regime State, communities, social tenure right holders, and private entities own forest resources, including ecosystem services, such as carbon.	ERs rights primarily linked to forest landowners and social tenure rights holders including private entities, communities and Indigenous Peoples. Forest landowners and social tenure right holders can devolve ER rights and titles to the State and jurisdictional entity to allow transactions with third parties. Although a rights based approach is necessary, certain countries that have enacted such devolution of carbon rights to the programme entity at the national scale by signing individual contracts with landowners face challenges due to the lack of human and financial capacities and high transaction costs, and have expressed concerns in this regard, such as Costa Rica.	The benefit sharing plan will often allocate an important share of benefits to forest resource owners; other potential beneficiaries can also be considered. Benefits generated by ERs performances are allocated to forestland owners, such as state-communities, and social legitimate tenure right holders. The state allocates benefits to relevant parties, such as communities and Indigenous Peoples or private entities involved in ER activities in state-owned forestlands, including vulnerable groups. Benefit sharing modalities to be decided between the parties, such as communities, private entities or the government, if a REDD+ project developer is aiming to participate in nesting.

Source: Prepared by the author.

Primary ownership, devolvement and transfer of ERs rights

Entitled parties for holding primary ERs rights, before transfer occurs, might include forest landowners, non-state actors who contributed to generating ERs and the government, such as state forest lands or if designated to administer ER volumes).

Ownership may be transferred to other actors through regulation or by contractual agreements. This case is especially relevant when accessing the voluntary market or if jurisdictional carbon

Before transfers occur, the primary ownership of emissions reductions (ERs) can rest with:

- those who own lands and forests;
- non-state actors who contributed to generating ERs;
- the government/state; and
- others.

Source: Prepared by the author.

credits are to be sold to the FCPF Carbon Fund or in the context of the Lowering Emissions by Accelerating Forest finance (LEAF) Coalition through the signature of Emission Reduction Payment Agreements (ERPAs).

In the voluntary carbon market, ERs rights derived from REDD+ projects can be devolved to private investors through concession contracts or to the project developer when carbon projects receive approvals.

In other contexts, no transfer of titles is required to access RBPs, but clarity related to ER titles and avoidance of claims by third parties are needed, such as the +Bosques project in Chile or Green Climate Fund.

Where the government primarily owns ERs, it may directly transfer ownership to other actors, such as other governments, the private sector or other intermediaries like in the context of FCPF or ART-TREES.

For example, **Gabon** adopted a climate change law (2021) addressing requirements related to entitlement to tracking and cancellation of GHG-emissions allowances, Gabonese carbon credits, other recognized carbon credits, including Internationally Transferred Mitigation Outcomes, ITMO, and carbon stocks, as well as the ownership of and rights resulting from GHG emissions reduction projects. All existing carbon stocks – or improvements to carbon stocks resulting from GHG emissions reduction projects or increased GHG absorption – are the exclusive property of the state. However, the state grants legal ownership of improvements to carbon stocks resulting from GHG emissions reduction projects to project proponents. A Gabonese carbon credit constitutes personal property and may be transferred nationally or internationally. International transfers of Gabonese carbon credits, including to a foreign account and for purposes of Article 6 of the Paris Agreement, requires the authorization of the Climate Issues Management Authority.

In the **Democratic Republic of the Congo**, as mentioned above, the Ministerial Decree 047/2018 states that carbon stocked in forests are originally owned by the state (Article 3). The state subsequently recognizes REDD+ investment holders' exclusive ownership of emission reduction units (UREC) generated in the Democratic Republic of the Congo upon approval. The steps to complete this approval process are further defined by the Decree and consist of two parts: registration in the National REDD+ Register, which is not yet operational and approval of the REDD+ investment.

Box 2

Collaborative agreements in the context of the +Bosques Reducing Emissions from Deforestation and forest Degradation, plus the sustainable management of forests, and the conservation and enhancement of forest carbon stocks (REDD+) Pilot Programme in Chile: Green Climate Fund (GCF)

The National Forest Commission of Chile has prepared collaborative agreements, convenios de colaboración, involving small and medium landowners regarding the non-monetary benefits derived from the implementation of the REDD+ Strategy (Estrategia Nacional de Cambio Climático y Recursos Vegetacionales – ENCCRV). The rights and obligations related to Green Climate Fund (GCF) results-based payments are regulated at the territorial level through bilateral agreements. Each agreement will vary according to the modality chosen, the nature of the counterpart, and will contain elements set within the benefit sharing plan to clarify how benefits will be distributed among the beneficiaries contributing to generating payments.

The agreement states that emissions reductions and removals (ERRS) generated from the implementation of the activities reported will be exclusively accounted towards the country's Nationally Determined Contributions targets, according to the methodologies and reports submitted to the United Nations Framework Convention on Climate Change (UNFCCC) and in line with the ENCCRV. To avoid the risk of double counting or double payment, the owner shall not enter into any other contract, act or agreement involving Emissions Reductions (ER) transactions generated by the activities financed through +Bosques (GCF, REDD+, results-based payments) throughout the duration of this agreement.

Source: The National Forest Commission of Chile (CONAF), 2021.

Nesting forest carbon projects into jurisdictional REDD+ programmes: Legal implications

The increasing need to combine donor government funding with private sector investment to meet NDC targets requires forest countries' compliance with requirements set by RBPs, and carbon market schemes, at the project versus national levels.

In countries where REDD+ is implemented at various scales, from site specific projects to sub national and national programmes, decisions, especially around accounting, might involve the government for clarity and alignment of environmental integrity.

From a legal perspective, it is relevant to assess if a project based approach, adopted to allocate rights to land, vegetation or processes that generate emissions reductions to the project proponent, constitutes a precedent to define ER rights. Conversely, it is necessary to determine if a different approach is to be adopted at the national level to valorize REDD+ activities carried out by various actors, inter alia, government, local communities and the private sector.

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Box 3

Reducing Emissions from Deforestation and forest Degradation, plus the sustainable management of forests, and the conservation and enhancement of forest carbon stocks (REDD+) project in Brazil nut concessions in Madre de Dios (Peru)

Bosques Amazónicos (BAM) has entered a longterm partnership with the Madre de Dios Federation of Brazil nut concessioners (FEPROCAMD) aimed at preventing deforestation and preserving environmental integrity on 300 000 hectares of concession land in high quality rainforest.

The legal steps followed for the assignment of carbon rights to the firm, Bosques Amazónicos (BAM) SAC, include:

- the investment commitment agreement between BAM and FEPROCAMD;
- the assignment of a rights contract from an individual concessionaire to the Federation (FEPROCAMD); and
- a concession contract for the management and utilization of forestry products other than timber, entered into by, and between, the state and the concessionaires.

Lack of clear land titles and imprecise boundaries are considered challenges that can be overcome by closely collaborating with relevant government institutions. Particularly, BAM expects local participation to increase, once major initiative activities are underway, such as the sustained sale of carbon credits, finalization of the Brazil nut processing plant, and the implementation of the monitoring and surveillance system.

According to the climate change regulation (13/2019), the national climate change authority of Peru administers the National Registry of Mitigation Measures and authorizes the transfer of greenhouse gas emission reduction units. It also prepares and approves the guidelines for the operation of the National Registry of Mitigation Measures (Article 56.5).

Source: Garrish,V., Perales, E., Duchelle, A., Cronkleton, P. 2014. *The REDD Project in Brazil Nut Concessions in Madre de Dios, Peru*. Bogor, CIFOR.

According to JNR VERRA, jurisdictional proponents must demonstrate how jurisdictional rights relate to the rights of non-state stakeholders, including Indigenous Peoples, local communities, private entities and individuals, and how the rights of existing and future nested projects or programmes will be respected. At the project level, the proponent should demonstrate statutory, property, or contractual rights to the land, vegetation or conservational or management processes that generate GHG emissions reductions and removals, or establish an enforceable and irrevocable agreement with the landowner or user, generating GHG emissions reductions or removals.

There is a need to promote consistency in the measurement of GHG Units issued under different standards at the project versus jurisdictional levels. VERRA may now require projects to change their approach to align with expected VCS requirements and ensure that jurisdictional data is used appropriately.[2]

As it concerns post Glasgow's implications related to Article 6 of the Paris Agreement, the engagement of countries in REDD+ jurisdictional programmes might fit in Article 6.2 cooperative approaches. Through existing guidance provided by voluntary standards (JNR or ART-TREES) and multilateral RBP programmes (FCPF, GCF), countries are making efforts to meet the quality criteria required for large-scale programmes. As many countries are in the process of developing jurisdictional programmes, guidance on nesting could ensure

[2] Verra recently launched a public consultation on high level concepts that will facilitate VCS REDD+ project nesting. This consultation includes early stage thinking on how REDD+ projects should adopt or align with jurisdictional data and reference levels.

they can integrate projects by authorized private entities in larger programmes.

Designing a nested REDD+ system might require understanding the rights of communities and individuals who benefit from ecosystem services, such as carbon sequestration.

Alternatively, governments that agreed to transfer ERs to international partners must ensure that those obligations are consistent with national laws, and are backed up by sub arrangements with landowners and users, and rights holders, if needed.

For countries that recognize community or private rights in forestlands, a decentralized nested system may be an appropriate approach.

Countries in which forest resources are attributed to the state by constitution or law, and in which the state retains the right to manage, or has established by law that all carbon rights rest with the state, may choose to implement a jurisdictional ER program with benefit sharing. They might also design a centralized nested approach. This approach is easiest to implement in countries where the national government makes all relevant land use decisions and manages all, or most, of the country's forests.

For countries that have national procedures in place for allocating the management of state forests to private parties through licenses or concessions, or to recognize ancestral land rights to local or Indigenous communities, with the state acting as the original holder of rights to ERs, a nested approach may be appropriate.

In most countries, even if forest resources or lands are publicly owned, there are legal mechanisms through which rights are granted, especially to local communities or Indigenous Peoples. In such cases, this model would have to recognize the devolution of rights to such communities, and either clarify through law or regulations that the communities are authorized to develop projects or ensure their inclusion in the benefit sharing mechanism.

2. LEGAL OPTIONS TO CLARIFY ERs RIGHTS

A review of the country experience highlighted three main legal options to clarify ERs rights: i) updating legislation, ii) agreeing on arrangements between actors, and iii) drafting benefit sharing mechanisms that might also have to be developed in the case of i) and ii).

Updating legislation is often difficult, especially in countries where different systems of law, with different origins, coexist, such as statutory versus customary law. In addition, a multistakeholder dialogue aiming to promote consensus on the subject is required to ensure informed decisions, and practical and enforceable solutions.

The possibility of legal reforms to address ER rights effectively depends on the political will and priorities set by governments. Moreover, if the forestry or climate change legislation is under consultation, it might represent an occasion to raise this concern and encourage informed discussions among the parties to clarify those rights, like in Mexico. Reliance may be placed on secondary legislation adopted by the executive body, such as a ministerial regulation or decree, which does not require the approval of the legislative body, like in the Democratic Republic of the Congo and Mozambique.

Where legislation does not regulate the matter, and the revision of the legislation would take a long time, arrangements among the interested and affected parties may be an effective legal instrument to clarify ER rights bilaterally. The government, communities, private landowners and companies can contractually agree on how to share rights and responsibilities when developing REDD+ projects or programmes, in respect to social and environmental safeguards and protecting vulnerable group's rights.

The **Indonesian** regulatory framework does not expressly stipulate who owns carbon, however, according to the constitutional principle in UUD (Udang Udang Dasar)1945 and Article 4 of Basic Forestry Regulations, forests and everything directly associated, iincluding carbon, is primarily owned by the government, including communal and traditional rights over (adat) lands. However, entities and individuals that have acquired a Forest Carbon Operation Permit from the Ministry of Environment and Forestry (MOEF) hold the right to: (i) manage activities related to forest carbon management during the authorized period, and (ii) trade the forest carbon managed by the holder (Article 9-1). To help further its progress in meeting REDD+ goals, Indonesia might consider legislative action to integrate and unify formal and customary land rights in a definitive way that addresses not only use, but also effective control and ownership of land.

When tenure rights and ERs are not sufficiently clear, agreements aiming to define the share of benefits between the jurisdictional entity and individual or collective groups contributing to REDD+ can constitute as the basis to demonstrate the jurisdictional entity's ability to transfer ERs rights.

Benefit sharing must respect forest tenure rights, but eligibility criteria used to identify beneficiaries might consider other elements key to ensuring equity, inclusiveness, and solidarity. Furthermore, while allocation of benefits pertains to compensating rights derived from undertaken actions, benefit sharing must create incentives to enhance REDD+ targets.

Types of Reducing Emissions from Deforestation and forest Degradation, plus the sustainable management of forests, and the conservation and enhancement of forest carbon stocks (REDD+) benefits:

- monetary
- non monetary combinations
- non carbon benefits

Source: World Bank. 2020. Note on benefit sharing for emission reductions programs under the Forest Carbon Partnership Facility and BioCarbon Fund Initiative for Sustainable Forest Landscapes. Washington, DC.

Results-based REDD+ payment schemes, such as the GCF or the FCPF Carbon Fund, typically require countries to develop a benefit sharing plan or to define details on the use of proceeds. Under ART-TREES, the jurisdictional entity must describe any agreements in place, or that will be in place, for the transfer of ER rights or benefit allocation arrangements with landowners or resource rights holders that exist with project owners, landowners and other collective rights holders, including Indigenous Peoples and other traditional communities.

When developing benefit sharing plans, the modalities and types of benefits to be distributed, as well as the eligibility criteria for participation, the metrics for performance measurement and the allocation of any liabilities are critical elements to ensure its enforcement.

Chile's benefit sharing plan considers only non-monetary benefits including technical assistance, provision of farm consumables and execution of forestry work. There are two modalities for CONAF regional offices to allocate such benefits at the local level. The first modality foresees the development of a prioritized project pipeline for direct implementation. Under the second modality, grants are allocated through public tender to other agencies, such as service providers.

For distributing funds among regions, the benefit sharing system requires forest monitoring that tracks REDD+ results at the regional level. In the context of the +Bosques REDD+ Pilot Programme (GCF), Chile's forest monitoring system would not enable identification of mitigation results at the level of properties.

The role of a registry

Where emissions reductions underlie carbon credit issuances, registry transactions can correspond to transfers in emission reduction titles and play a key role in avoiding double counting. However, setting up and operating carbon transaction registries is technically, legally and administratively quite demanding. International registries hold under Verra's VCS and the FCPF Carbon Fund, have so far been more relevant for REDD+ than countries' own registries. This said, countries are advancing in setting up and ruling registries recently created by law.

In **Colombia**, Article 175 of Law 1753/2015 provides the Ministry of Environment and Sustainable Development (MEDS) is the government entity in charge of accrediting the reduction of GHG emissions in the framework of national or subnational programmes. This legal provision is the sole provision that establishes a legal attribution in relation to reduced emissions from REDD+ activities. This commitment is operationalized and made public through the registration of the corresponding national or subnational programme in the National Greenhouse Gas Emissions Reduction Registry (RENARE), thus avoiding double counting and competing claims.

According to the new climate change law (2021) of **Gabon**, the national GHG register serves as the register of GHG-emissions allowances, Gabonese carbon credits and other carbon credits issued or recognized by the Climate Issues Management Authority (including Internationally Transferred Mitigation Outcomes), thus avoiding double counting or payment. Specifically, when a Gabonese carbon credit is issued to a national GHG register account designated by a project's proponent, legal ownership of the Gabonese carbon credit and any associated carbon stock rests with the account holder.

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PRELIMINARY CONCLUSIONS

Although countries have made significant efforts during the last decade to update forestry legislation in line with international climate change commitments, only few expressly regulate carbon rights or ERs titles; therefore, more clarity is needed.

Certain countries differentiate carbon rights, which may have tenure implications, such as the landowner owns the carbon, from emission reduction (ER) titles, which are referred to as property rights linked to credits derived from REDD+ activities. Baseline results will not only reward for the carbon stored in trees, but the actions that lead to the change in trends as well. Overall, a more stable enabling environment that affords legal protection to contracting parties would stimulate investments in REDD+ and protect vulnerable groups. However, intangible resources, such as ERs, still pose challenges for traditional forestry related property law systems.

What is certainly needed is to support participatory and inclusive law making processes or debates aimed at clarifying governments' capacity to administer RBPs and how appropriate legal instruments might clarify carbon rights, ER titles, certified emissions reductions (CERs) and benefit sharing arrangements to avoid tensions between the parties.

Unclear forest tenure or conflicting rights over forests contribute to deforestation, while REDD+ performance based finance can improve tenure by providing the right incentives to untangle the bundle of rights linked to forests. In this regard, the participation of sound national lawyers, accompanied by international expertise, is vital to provide legal feedback, propose viable legal solutions and contribute to solving inconsistencies or legal doubts.

An important consideration for governments is the need to avoid competing claims or double payments, which is required by international standards and programmes. Further considerations include the need to create an environment that is conducive to attracting investments from the private sector and the need to protect vulnerable group's rights, in line with the UNFCCC Cancun Safeguards.

Legal solutions will often go hand-in-hand with discussions on benefit sharing and on necessary infrastructure, such as registries for mitigation actions or for transferring carbon credits.

As a final reflection, the implications for the players in the carbon market remain to be seen, particularly as it concerns forestry countries' compliance with, and implementation of, Articles 6.2 and 6.4 of the Paris Agreement in the post Glasgow era. To date, certain countries are intervening by regulating credit issuances,[3] but importantly, forest related rights of all relevant stakeholders will need to be respected.

3 E.g. According to the climate change regulation (13/2019) of Peru, the national climate change authority authorizes the transfer of GHG emission reduction units.

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ANNEX I:

WEBSITES AND OTHER RESOURCES

Green Climate Fund (GCF) REDD+ Portal: See projects approved (section F of the projects, dealing with REDD+ title) www.greenclimate.fund/redd

Portal of the forest carbon partnership facility (FCPF) -Carbon Fund
Guidance Note on the Ability of Program Entity to Transfer Title to Emission Reductions (ERs)
www.forestcarbonpartnership.org/requirements-and-templates

The REDD+ environmental excellence standard (TREES) v1.0 (p.65)
www.artredd.org/trees

VERRA-jurisdictional and nested REDD+ (JNR) *new standard now launched
https://verra.org/project/jurisdictional-and-nested-redd-framework

VERRA-REDD project in Brazil nut concessions in Madre de Dios, Peru
https://registry.verra.org/app/projectdetail/vcs/868

UN-REDD Programme

The United Nations Collaborative Programme on

Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD) was launched in 2008 and builds on the convening role and technical expertise of the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UN Environment). The UN-REDD Programme supports nationally led REDD+ processes and promotes the informed and meaningful involvement of all stakeholders, including Indigenous Peoples and other forest dependent communities, in national and international REDD+ implementation.

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